UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

June 26, 2017 at 10:00 a.m.

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1. 15-29600-A-11 NCK-3 — ANTIGUA CANTINA & GRILL, INC. — MOTION TO APPROVE DISCLOSURE STATEMENT 5-5-17 [111]

Final Ruling: The motion will be dismissed as moot because the case was dismissed on May 16, 2017. Docket 118.

2. 14-30833-A-11 FWP-34 — SHASTA ENTERPRISES — MOTION FOR FINAL DECREE AND ORDER CLOSING CASE 5-24-17 [616]

Tentative Ruling: The motion will be denied without prejudice.

The administrator of the confirmed chapter 11 plan is asking the court to enter a final decree and close the case, contending that: the estate's liquidation plan was confirmed, all property of the debtor has been liquidated, all post-confirmation reports have been filed, and quarterly fees to the U.S. Trustee are current.

11 U.S.C. § 350(a) provides that "[a]fter an estate is fully administered and the court has discharged the trustee, the court shall close the case." Similarly, Fed. R. Bankr. P. 3022 provides that "[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case."

In the chapter 11 context, courts have defined full administration as substantial consummation. In re Wade, 991 F.2d 402, 406 n.2 (7th Cir. 1993) (citing In re BankEast Corp., 132 B.R. 665, 668 n.3 (Bankr. D.N.H. 1991)). Substantial consummation is defined by section 1101(2) as "(A) transfer of all or substantially all of the property proposed by the plan to be transferred; (B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and (C) commencement of distribution under the plan."

The motion will be denied because the movant only anticipates that there will be substantial consummation of the chapter 11 plan by the hearing on the motion. "As of the date of the hearing on this Motion, it is expected that all documents needed to implement the Plan will have been signed and all payments will have been made as provided in the Plan." Docket 618 at 3.

In other words, as of the May 24 date the motion was filed and served, there was no substantial consummation or basis for the granting of the motion. As such, there is no basis for the granting of the motion. The court cannot grant a motion on the basis of facts that are merely anticipated and not yet in existence.

3. 13-24036-A-13 ANTHONY/MARY NEAL — MOTION TO DISMISS ADVERSARY PROCEEDING
17-2069 SW-1 — 5-25-17 [6]
NEAL ET AL V. WELLS FARGO HOME MORTGAGE ET AL

Tentative Ruling: The motion will be granted and the complaint will be dismissed.

The defendant, Wells Fargo Home Mortgage, seeks dismissal on the ground that the court lacks subject matter jurisdiction as to the non-bankruptcy claims and on the ground the claim based on a violation of the automatic stay cannot proceed because there was no automatic stay in this case.

The plaintiffs, the debtors in the underlying chapter 13 bankruptcy case (Case No. 13-24036), have not filed a response to the motion.

The plaintiffs filed the underlying chapter 13 case on March 26, 2013. They filed a chapter 13 plan on the petition date and an order confirming the plan was entered on June 27, 2013. The defendant's claim is provided for under the plan as a class 4 claim. The defendant holds a mortgage secured by the plaintiffs' residence.

Sometime around the time an order confirming the plan was entered, the plaintiffs defaulted on the defendant's claim. The defendant urged the plaintiffs to apply for loan modification. During the next several years, the plaintiffs were denied loan modification multiple times.

The plaintiffs filed this adversary proceeding on April 24, 2017, asserting a:

(1) claim for violation of 11 U.S.C. § 105(a), seeking the defendant to be held in contempt of court;

(2) claim for violation of 11 U.S.C. § 362;

(3) claim for violation of 15 U.S.C. § 1692 (part of the Fair Debt Collection Practices Act);

(4) claim for violation of Cal. Bus. & Prof. Code § 17200;

(5) claim for violation of Cal. Civ. Code § 2924;

(6) claim for violation of Cal. Civ. Code § 2923.5;

(7) claim for fraud (labeled as "misrepresentation"), alleging that the defendant "willfully induce[s] their mortgage holders to enter into a Trial Modification that ends up never materializing into a permanent modification[,] [and] [t]he bank then sells the home to the next highest bidder and end[s] up gaining double by writing a whole new mortgage with a totally new purchaser;" (Docket 1 at 5), and

(8) claim for undue influence.

The court will strike the defendant's reply (Docket 17) because the plaintiff did not file opposition to the motion. In the absence of opposition, the defendant was not entitled to file a reply. See Local Bankruptcy Rule 9014-1(f)(1)(C) (permitting replies to be filed only "to any written opposition").

The court agrees that it has no subject matter jurisdiction over the non-bankruptcy causes of action.

Upon plan confirmation, in June 2013, the chapter 13 estate's assets revested in the plaintiffs. The box for revestment has been checked by the plaintiffs. Case No. 13-24036, Docket 5 at 4. Thus, when the alleged wrongs took place, after June 2013, there was no bankruptcy estate.

As such, the post-confirmation jurisdiction standard of Pegasus and its progeny applies here. See State of Montana v. Goldin (In re Pegasus Gold Corp.), 394 F.3d 1189, 1194 (9th Cir. 2005).

The treatment of the "related to" jurisdiction standard of Pacor by Binder v. Price Waterhouse & Co. (In re Resorts Int'l, Inc.), 372 F.3d 154, 164-65 (3rd Cir. 2004) shows that the post-confirmation jurisdiction test in Resorts and Pegasus was designed to apply only to post-confirmation jurisdiction where there is no bankruptcy estate any longer.

"A bankruptcy court's 'related to' jurisdiction is very broad, including nearly every matter directly or indirectly related to the bankruptcy." Wilshire Courtyard v. California Franchise Tax Board (In re Wilshire Courtyard), 729 F.3d 1279, 1287 (9th Cir. 2013) (quoting Sasson v. Sokoloff (In re Sasson), 424 F.3d 864, 868 (9th Cir. 2005)).

On the other hand, this court's post-confirmation jurisdiction is "necessarily more limited" than its pre-confirmation "related to" jurisdiction. State of Montana v. Goldin (In re Pegasus Gold Corp.), 394 F.3d 1189, 1194 n.1 (9th Cir. 2005).

Under Pegasus, the test for post-confirmation jurisdiction, where there is no bankruptcy estate any longer, is whether "'there is a close nexus to the bankruptcy plan or proceeding sufficient to uphold bankruptcy court jurisdiction over the matter.'" Pegasus at 1194 (quoting In re Resorts Int'l, Inc., 372 F.3d 154, 166-67 (3rd Cir. 2004)).

In applying the close nexus test, the Pegasus court focused on pre-confirmation links, namely, the Zortman Agreement and the plan itself. The Zortman Agreement was a settlement agreement among the debtor, the State of Montana, and other parties, that had been approved by the bankruptcy court few days prior to plan confirmation. Pegasus at 1192.

The Pegasus court concluded that matters affecting the interpretation, implementation, consummation, execution, or administration of the confirmed plan will typically have the requisite close nexus. Pegasus at 1193-94. The court indicated also that when the underlying litigation does not affect implementation of a plan but merely increases assets available for distribution under the plan, related to jurisdiction does not exist. "We specifically note that in reaching this decision, we are not persuaded by the Appellees' argument that jurisdiction lies because the action could conceivably increase the recovery to the creditors. As the other circuits have noted, such a rationale could endlessly stretch a bankruptcy court's jurisdiction." Pegasus at 1194 n.1 (citing Resorts, at 170); see also Battle Ground Plaza, LLC v. Ray (In re Ray), 624 F.3d 1124, 1133-35 (9th Cir. 2010); Sea Hawk Seafoods, Inc. v. State of Alaska (In re Valdez Fisheries Dev. Ass'n, Inc.), 439 F.3d 545, 548 (9th Cir. 2006); Heller Ehrman LLP v. Gregory Canyon Ltd. (In re Heller Ehrman LLP), 461 B.R. 606, 608-10 (Bankr. N.D. Cal. 2011).

In the more recent Wilshire Courtyard decision, the Ninth Circuit revisited the post-confirmation jurisdiction test under Pegasus, stating that:

"*The 'close nexus' test determines the scope of bankruptcy court's post-confirmation 'related to' jurisdiction. Pegasus Gold Corp., 394 F.3d at 1194. As adopted from the Third Circuit, the test encompasses matters*

'affecting the "interpretation, implementation, consummation, execution, or administration of the confirmed plan."' Id. (quoting Binder v. Price Waterhouse & Co. (In re Resorts Int'l, Inc.), 372 F.3d 154, 166-67 (3d Cir.2004)). The close nexus test 'recognizes the limited nature of post-confirmation jurisdiction but retains a certain flexibility.' Id.

"Applying the close nexus test in Pegasus Gold, we held that 'related to' jurisdiction existed because some claims concerning post-confirmation conduct—specifically, alleged breach of the liquidation/reorganization plan and related settlement agreement as well as alleged fraud in the inducement at the time of the plan and agreement—would 'likely require interpretation of the [settlement agreement and plan].' Id. The claims and remedies could also 'affect the implementation and execution' of the as-yet-unconsummated plan itself. Id.

". . .

"The [lower court] BAP 'distill[ed]' too narrow a version of the 'close nexus' test from Valdez Fisheries and Ray: '[T]o support jurisdiction, there must be a close nexus connecting a proposed post-confirmation proceeding in the bankruptcy court with some demonstrable effect on the debtor or the plan of reorganization.' (Citation omitted). Valdez Fisheries and Ray simply applied the Pegasus Gold 'close nexus' test to the unique—and distinguishable—facts of those cases. We reaffirm that a close nexus exists between a post-confirmation matter and a closed bankruptcy proceeding sufficient to support jurisdiction when the matter 'affect[s] the interpretation, implementation, consummation, execution, or administration of the confirmed plan.' Pegasus Gold Corp., 394 F.3d at 1194 (internal citation and quotation marks omitted).

"The Pegasus Gold 'close nexus' test requires particularized consideration of the facts and posture of each case, as the test contemplates a broad set of sufficient conditions and 'retains a certain flexibility.' Id. Such a test can only be properly applied by looking at the whole picture.

". . .

"Thus, under the 'close nexus' test, post-confirmation jurisdiction in this case extends to matters such as tax consequences that likely would have affected the implementation and execution of the plan if the matter had arisen contemporaneously. This application of the Pegasus Gold test does not prejudice either taxing entities or bankruptcy parties, nor requires the tax consequences to be assessed before transactions are consummated and taxes are due. It merely allows the bankruptcy court to retain jurisdiction over post-confirmation, post-consummation disputes related to the interpretation and execution of the confirmed Plan as if they had arisen prior to consummation. Thus, we reject CFTB's argument that jurisdiction was lacking because the bankruptcy case had been long since closed by the time the tax dispute began, and that neither the Plan nor Reorganized Wilshire could be affected."

Wilshire Courtyard at 1287, 1288-89, 1292-93.

This court has no post-confirmation subject matter jurisdiction over causes of action 3 through 8 as identified above. There is no close nexus between the conduct leading to those claims and the bankruptcy plan or proceeding.

These claims concern post-confirmation conduct that allegedly harmed the plaintiffs. The conduct is limited to what the defendant did or did not do during loan modification communications with the plaintiffs.

However, the plan says nothing about loan modifications, much less a loan modification with the defendant. The defendant's claim is treated as a class 4 claim. Under the terms of the plan, class 4 claims "mature after the completion of this plan, are not in default, and are not modified by this plan." Case No. 13-24036, Docket 5 at 3. "These claims shall be paid by Debtor or a third person whether or not the plan is confirmed." Id.

The plan even provides that the defendant may foreclose on its collateral in the event of a default in payments to the defendant.

"Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract."

Case No. 13-24036, Docket 5 at 3.

In other words, under the terms of the plan, the defendant's remedies as to its claim and collateral exist outside the plan and bankruptcy proceeding.

The same is true as to the plaintiffs' remedies.

Causes of action 3 through 8 can be litigated in a non-bankruptcy forum without impacting the course of the plan and the bankruptcy case. If the claims are litigated in a non-bankruptcy forum, for example, there is nothing this court must do with respect to the plan or bankruptcy proceeding. The court has no subject matter jurisdiction over those claims. The claims will be dismissed.

The court finds it unnecessary to address other grounds for dismissal of these claims. Specifically, the request for abstention will be denied as the defendant has not identified a pending state proceeding. Abstention does not apply in the absence of a pending state proceeding. See Schulman v. California (In re Lazar), 237 F.3d 967, 981-82 (9th Cir. 2001) (holding that 28 U.S.C. §§ 1334(c)(1) and 1334(c)(2) do not apply when "there is no pending state proceeding").

The cause of action under 11 U.S.C. § 105(a) claim will be dismissed without leave to amend. The plaintiffs' ask the court to hold the defendant in contempt. This makes no sense. As discussed above, none of the alleged misconduct relates to an order of the court or to the confirmed chapter 13 plan. There are no allegations in the complaint that the defendant violated an order of the court or the confirmed plan.

Finally, as noted above, when the plan was confirmed, the estate re-vested in the plaintiffs. As such, the estate ceased to exist upon plan confirmation, in June 2013.

And, there was no automatic stay given that the plan provides for the termination of "all bankruptcy stays" with respect to the class 4 claims. "Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract."

Case No. 13-24036, Docket 5 at 3.

Even if the plan had not provided for the termination of the automatic stay, none ever existed in this case. 11 U.S.C. § 362(c)(4)(A) provides that (i) "if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the

stay under section (a) shall not go into effect upon the filing of the later case; and (ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect."

On September 20, 2012, the plaintiffs filed a chapter 13 case (case no. 12-36978). That case was dismissed on October 1, 2012. On December 17, 2012, the plaintiffs filed another chapter 13 case (case no. 12-41560). That case was dismissed on February 25, 2013. The plaintiffs filed the instant chapter 13 case on March 26, 2013.

The court has reviewed the dockets of the first and second prior cases and has confirmed that those cases were dismissed and were pending within a year of the filing of the instant case. Nor did the court impose the stay in this last chapter 13 case. Accordingly, the automatic stay did not go into effect upon the filing of this case on March 26, 2013. The claim for violation of section 362 will be dismissed without leave to amend.

4. 13-24036-A-13 ANTHONY/MARY NEAL — CONTINUED STATUS CONFERENCE
17-2069 — 4-24-17 [1]
NEAL ET AL V. WELLS FARGO HOME MORTGAGE ET AL

Tentative Ruling: None.

5. 16-28443-A-7 SCOTT TIBBEDEAUX — MOTION TO DISMISS ADVERSARY PROCEEDING
17-2061 — 5-23-17 [19]
ALTMANN V. TIBBEDEAUX ET AL

Tentative Ruling: The motion will be granted in part and denied in part.

The defendant, Scott Tibbedeaux, the debtor in the underlying chapter 7 case, moves for dismissal, asserting lack of personal jurisdiction and insufficiency of service of process due to the plaintiff's failure to serve the complaint, and failure to state a claim upon which relief can be granted.

The plaintiff, Ernest Altmann, maintains that the defendant was properly served.

The plaintiff filed this adversary proceeding on April 14, 2017. The summons was issued on April 17 and was served on April 24. Dockets 2 and 10. The plaintiff's certificate of service filed with the court on April 27 states that the complaint was included in the documents served on the defendant. Docket 10.

The court will deny the motion to dismiss due to a lack of personal jurisdiction and/or insufficiency of service. Under Fed. R. Bankr. P. 7004(f), it is "serving a summons . . . [that] establish[es] personal jurisdiction over the person."

The defendant has acknowledged receiving the summons. He complains only of not receiving the complaint. And, as of May 23, when this motion was filed, the defendant acknowledges that he downloaded the complaint from the court's electronic record. Docket 19 at 3.

And, the court is convinced that the defendant received the plaintiff's one-page complaint. The plaintiff filed a certificate of service on April 27, indicating that the complaint was served on April 24 along with the summons and notice of status conference hearing. Docket 10. The certificate was executed by Elena Danilova under the penalty of perjury. Id.

The complaint, however, will be dismissed under Fed. R. Civ. P. 12(b)(6), as made applicable by Fed. R. Bankr. P. 7012(b).

Rule 12(b)(6) permits dismissal when a complaint fails to state a claim upon which relief can be granted. Dismissal is appropriate where there is either a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. Saldate v. Wilshire Credit Corp., 686 F. Supp. 2d 1051, 1057 (E.D. Cal. 2010) (citing Balisteri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990)(as amended)).

"In resolving a Rule 12(b)(6) motion, the court must (1) construe the complaint in the light most favorable to the plaintiff; (2) accept all well pleaded factual allegations as true; and (3) determine whether plaintiff can prove any set of facts to support a claim that would merit relief." See Stoner v. Santa Clara County Office of Educ., 502 F.3d 1116, 1120-21 (9th Cir. 2007); see also Schwarzer, Tashmina & Wagstaffe, California Practice Guide: Federal Civil Procedure Before Trial, § 9.187, p. 9-46, 9-47 (The Rutter Group 2002).

"*To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' . . . A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. . . . The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully. . . . Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of "entitlement to relief."'*"

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (Citations omitted).

"In sum, for a complaint to survive a motion to dismiss, the non-conclusory 'factual content,' and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009) (quoting Iqbal at 678).

The Supreme Court has applied a "two-pronged approach" to address a motion to dismiss:

"*First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. . . . Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. . . . Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. . . . But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'-'that the pleader is entitled to relief.'*

"*In keeping with these principles a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.*"

Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009) (Citations omitted).

The complaint here is one page in length. Docket 1 at 1. It states only:

"Concerning:
Breach of Contract
Professional Negligence
Breach of Fiduciary Duty
Elder Abuse
Loss of Home

"Damages: 1,000,000.00

"Requesting: Fee Waiver."

Docket 1 at 1.

The next four pages attached to the complaint are the plaintiff's request for waiver of the filing fee. The complaint states no facts and makes no effort to recount the defendant's alleged misconduct.

Moreover, the defendant received a bankruptcy discharge on April 27, 2017. Only debt prescribed by 11 U.S.C. § 523(a) may be excepted from discharge. Yet, the court sees no section 523(a) claims in the complaint.

The court will not permit the plaintiff to prosecute claims against the defendant for debts that have been discharged. For example, debt underlying breach of contract and negligence claims is dischargeable. To prosecute claims based on discharged debt is violation of the discharge injunction. See 11 U.S.C. § 524.

Because the complaint includes no factual allegations as to the remaining claims and so the complaint will be dismissed but with leave to amend.

The plaintiff has seven days from entry of the order on this motion, to amend the complaint to allege the facts that warrant relief in his favor on theories that can be excepted from discharge under section 523(a). In addition to filing the amended complaint with the court, the plaintiff shall serve that complaint on the defendant. Certificate of service shall be filed with the court within three days of service. The defendant shall have 14 days from the date of service to file and serve a response to the amended complaint.

6. 16-28443-A-7 SCOTT TIBBEDEAUX — CONTINUED STATUS CONFERENCE
17-2061 — 4-14-17 [1]
ALTMANN V. TIBBEDEAUX ET AL

Tentative Ruling: None.

7. 17-23353-A-11 AMERICAN RIVER DETAIL AUTO BODY — ORDER TO SHOW CAUSE 5-31-17 [14]

Final Ruling: This order to show cause was issued due to the debtor's failure to pay the petition filing fee. However, as the case was dismissed on June 9, 2017, the order to show cause will be discharged.

8. 17-23353-A-11 AMERICAN RIVER DETAIL AUTO BODY — STATUS CONFERENCE 5-17-17 [1]

Final Ruling: The status conference hearing is dropped from calendar as the

case was dismissed on June 9, 2017.

9. 12-27062-A-11 CECIL PULLIAM — MOTION FOR ENTRY OF DISCHARGE
GEL-2 — 6-1-17 [145]

Tentative Ruling: The motion will be granted.

The hearing on this motion was continued from June 15, in order for the movant to supplement the record. The movant has filed a supplemental declaration in support of the motion.

The debtor asks the court to enter his discharge pursuant to 11 U.S.C. § 1141(d)(5), which provides that:

"*In a case in which the debtor is an individual—*

"*(A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan;*

"*(B) at any time after the confirmation of the plan, and after notice and a hearing, the court may grant a discharge to the debtor who has not completed payments under the plan if —*

"*(i) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 on such date; and*

"*(ii) modification of the plan under section 1127 is not practicable; and*

"*(C) unless after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge, the court finds that there is no reasonable cause to believe that —*

"*(i) section 522(q)(1) may be applicable to the debtor; and*

"*(ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).*"

The motion asks for discharge under section 1141(d)(5)(A).

The debtor has shown that he has completed all payments under the plan. The debtor will continue to pay long term claims, such as the claim secured by his real property. The debtor then satisfies section 1141(d)(5)(A).

The debtor also satisfies section 1141(d)(5)(C). He has confirmed that section 522(q)(1)(A) is not applicable to him. Docket 147. And, he does not owe a debt of the type outlined in section 522(q)(1)(B) and there is no pending proceeding of the type described in section 1141(d)(5)(C)(ii). Docket 151. The motion will be granted.

Therefore, no earlier than 10 days after the hearing on this motion, the clerk shall enter the debtor's discharge. See 11 U.S.C. § 1141(d)(5)(C).

10. 10-32769-A-11 PATRICIA MCELROY
GEL-2

MOTION FOR
ENTRY OF DISCHARGE
6-1-17 [405]

Tentative Ruling: The motion will be granted.

The hearing on this motion was continued from June 15, in order for the movant to supplement the record. The movant has filed a supplemental declaration in support of the motion.

The debtor asks the court to enter his discharge pursuant to 11 U.S.C. § 1141(d)(5), which provides that:

"*In a case in which the debtor is an individual—*

"*(A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan;*

"*(B) at any time after the confirmation of the plan, and after notice and a hearing, the court may grant a discharge to the debtor who has not completed payments under the plan if —*

"*(i) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 on such date; and*

"*(ii) modification of the plan under section 1127 is not practicable; and*

"*(C) unless after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge, the court finds that there is no reasonable cause to believe that —*

"*(i) section 522(q)(1) may be applicable to the debtor; and*

"*(ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).*"

The motion asks for discharge under section 1141(d)(5)(A).

The debtor has shown that she has completed all payments under the plan. The debtor will continue to pay long term claims, such as the claim secured by her real properties. The debtor then satisfies section 1141(d)(5)(A).

The debtor also satisfies section 1141(d)(5)(C). She has confirmed that section 522(q)(1)(A) is not applicable to her. Docket 407. And, she does not owe a debt of the type outlined in section 522(q)(1)(B) and there is no pending proceeding of the type described in section 1141(d)(5)(C)(ii). Docket 411. The motion will be granted.

Therefore, no earlier than 10 days after the hearing on this motion, the clerk shall enter the debtor's discharge. See 11 U.S.C. § 1141(d)(5)(C).